The ninety percent (90%) figure shall apply for the first twelve (12) months of this Agreement and shall be reduced to eighty percent (80%) thereafter if there has been no Specified Performance Breach during the first twelve (12) months. If the figure remains at ninety percent (90%) during the second twelve (12) months of the Agreement, it shall be reduced to eighty percent (80%) thereafter if there has been no Specified Performance Breach during the second twelve (12) months.

26.2 Specified Performance Breach. In recognition of the (1) loss of Customer opportunities, revenues and goodwill which either Party might sustain in the event of a Specified Performance Breach; (2) the uncertainty, in the event of such a Specified Performance Breach, of a Party having available to it customer opportunities similar to those opportunities currently available to the other Party; and (3) the difficulty of accurately ascertaining the amount of damages a Party would sustain in the event of such a Specified Performance Breach, each Party agrees to pay the other Party, subject to Section 26.4, damages as set forth in Section 26.3 in the event of the occurrence of a Specified Performance Breach.

26.3 Liquidated Damages. The damages payable by one Party to the other Party as a result of a Specified Performance Breach shall be $75,000 for each Specified Performance Breach (collectively, the "Liquidated Damages"). TCG and Ameritech agree and acknowledge that (a) the Liquidated Damages are not a penalty and have been determined based upon the facts and circumstances of TCG and Ameritech at the time of the negotiation and entering into of this Agreement, with due regard given to the performance expectations of each Party; (b) the Liquidated Damages constitute a reasonable approximation of the damages TCG or Ameritech would sustain if its damages were readily ascertainable; and (c) TCG or Ameritech shall not be required to provide any proof of the Liquidated Damages.

26.4 Limitations. In no event shall TCG or Ameritech be liable to pay the Liquidated Damages if its failure to meet or exceed any of the Performance Criteria is caused, directly or indirectly, by a Delaying Event. A "Delaying Event" means (a) a failure by the claiming Party to perform any of its obligations set forth in this Agreement (including, without limitation, the Implementation Schedule and the Grooming Plan), (b) any delay, act or failure to act by a Customer, agent or subcontractor of the claiming Party or (c) any Force Majeure Event. If a Delaying Event (i) prevents TCG or Ameritech from performing a Specified Activity, then such Specified Activity shall be excluded from the calculation of that Party's compliance with the Performance Criteria, or (ii) only suspends TCG's or Ameritech's ability to timely perform the Specified Activity, the applicable time frame in which Ameritech's or TCG's compliance with

the Performance Criteria is measured shall be extended on an hour-for-hour or day-for-day basis, as applicable, equal to the duration of the Delaying Event.

26.5 Sole Remedy. The Liquidated Damages shall be the sole and exclusive remedy of TCG under this Agreement for Ameritech's breach of the Performance Criteria and a Specified Performance Breach as described in this Section 26.0; and shall be the sole and exclusive remedy of Ameritech under this Agreement for TCG's breach of the Performance Criteria and a Specified Performance Breach as described in this Section 27.0. However, nothing herein shall prevent either Party from pursuing remedies available under the law, including petitioning the appropriate state or federal regulatory commission based on a pattern or practice of Specified Performance Breach.

26.6 Records. Ameritech and TCG shall maintain complete and accurate records, on a monthly basis, of their performance under this Agreement of each Specified Activity and their compliance with the Performance Criteria. Each Party shall provide to the other Party such records in a self-reporting format on a monthly basis. Notwithstanding Section 29.5.1, the Parties agree that such records shall be deemed "Proprietary Information" under Section 29.5.

27.0 REGULATORY APPROVAL

The Parties understand and agree that this Agreement will be filed with the Commission and may thereafter be filed with the FCC. The Parties covenant and agree that this Agreement is satisfactory to them as an agreement under Section 251 of the Act. Each Party covenants and agrees to fully support approval of this Agreement by the Commission or the FCC under Section 252 of the Act without modification. If the Commission or the FCC rejects any portion of this Agreement, the Parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification of the rejected portion; provided that such rejected portion shall not affect the validity of the remainder of this Agreement. The Parties acknowledge that nothing in this Agreement shall limit a Party's ability, independent of such Party's agreement to support and participate in the approval of this Agreement, to assert public policy issues relating to the Act.

28.0 QUALITY REVIEW PROCESS

28.1 The Parties shall, within 60 days of execution of this Agreement, develop procedures for conducting Quality of Service Reviews ("QSRs"). The Parties shall create QSR teams, appropriately staffed, that shall, at a minimum, (i) investigate and determine the cause

and impact of any Catastrophic Network Failures (defined below), (ii) perform a gap analysis on process and procedures which should have prevented the Failure; (iii) report within ten (10) business days to the other party in writing as to the nature of the Failure, its impact, its cause and its resolution and results of gap analysis; and (iv) implement a solution to limit any damage and prevent recurrence within a reasonable period of time, taking into account the circumstances involved in implementing the solution (i.e. time for vendor to develop software patch, etc.) failures of performance criteria triggering Specified Performance Breach under Section 27.2, QSR process begins.

28.2 A "Catastrophic Network Failure" is a network failure of either Party impacting or impairing service to multiple end users simultaneously. Such failures may be caused by, but are not limited to, NXX code mis-route, failure to activate properly assigned NXX codes, major facility or trunk group failures, and switch failures.

28.3 The Quality Review Process shall be used to evaluate Specified Performance Breaches under Section 27.2.

28.4 Ameritech shall provide TCG monthly reports which will provide performance comparisons within the same period of time and within the same service territory for TCG, for all CLECs and for Ameritech Affiliates. TCG shall provide Ameritech monthly reports which will provide performance comparisons within the same period of time and within the same service territory for Ameritech, for all CLECs and for TCG Affiliates.

29.0 MISCELLANEOUS

29.1 Authorization

29.1.1 Ameritech Services, Inc. is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Ameritech Information Industry Services, a division of Ameritech Services, Inc., has full power and authority to execute and deliver this Agreement and to perform the obligations hereunder on behalf of Ameritech.

29.1.2 TCG is a general partnership duly organized, validly existing and in good standing under the laws of the State of New York and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder.

Item 10	Copy of TCG's Petition for Reconsideration in Docket 96-98, which discusses performance standards and reporting.

STAMP & RETURN

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20054

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	

PETITION FOR RECONSIDERATION

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Vice President, Regulatory Affairs
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September 30, 1996

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SUMMARY

The Commission's First Report and Order issued in its proceeding to implement the local competition provisions of the Telecommunications Act of 1996 ("1996 Act") seeks to balance carefully the concerns and interests of the many interested parties in this proceeding. The Petition for Reconsideration submitted by Teleport Communications Group Inc. ("TCG"), therefore, focuses on only two issues: performance standards and pricing standards.

First, performance standards must be established by the Commission as a means to ensure that competitors can operate under their interconnection agreements. The national guidelines already established by this Commission will be given their intended effect only if incumbent LECs are required to meet specified installation intervals, mean time to repair, service availability standards, and other similar performance criteria. The Commission should establish corresponding reporting requirements and financial penalties to be assessed in the event that an incumbent LEC provides to a competitor service that is of a lesser quality than provided to itself or an affiliate, or performance standards will be meaningless.

Second, the Commission should satisfy the separate pricing standards established by Section 252(d)(1) for interconnection and network elements, and Section 252(d)(2) for Transport and Termination by establishing a distinct pricing standard for each. The Commission has determined erroneously that the pricing for both should be set according to a total element long run incremental pricing

methodology. However, the clear language of the 1996 Act shows that the adoption of a single pricing methodology to satisfy both Sections 252(d)(1) and 252(d)(2) is contrary to Congress's intent to establish two pricing standards.

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20054

In the Matter of	)	
	)	
Implementation of the Local	)	
Competition Provisions in the	)	CC Docket No. 96-98
Telecommunications Act of 1996	)	
	)	
Interconnection between Local	)	
Exchange Carriers and Commercial	)	
Mobile Radio Service Providers	)	

To: The Commission

PETITION FOR RECONSIDERATION

Teleport Communications Group Inc. ("TCG") hereby petitions the Federal Communications Commission ("FCC" or "Commission") to reconsider certain aspects of its First Report and Order issued in the above-captioned docket,[1] regarding the implementation of the Telecommunications Act of 1996 ("1996 Act").[2]

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1. Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-325, released August 8, 1996 ("Interconnection Order").

2. Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

I. INTRODUCTION.

The Commission's Order seeks to balance the needs of all interested parties and set a framework for an expeditious movement towards a competitive telecommunications market. This Petition, therefore, focuses only on two limited issues that TCG urges the Commission to reconsider.

First, the 1996 Act and the FCC's implementation orders have paved the way for competitive entry into the telecommunications market and have removed significant impediments to competition. However, this is only the first step. As TCG has experienced in states where it has been operating as a LEC, incumbent LECs continue to engage in anticompetitive practices even after competitive LECs enter the market. Thus, it is critical that, at this stage of competitive entry, the Commission set certain performance standards, described in detail below; such standards will ensure that the intent of the 1996 Act and the FCC's implementation orders are not thwarted.

Second, because the 1996 Act establishes two separate pricing standards, one for interconnection and unbundling and another for Transport and Termination, the FCC must also establish two separate pricing standards for these distinct functions if it is to meet the 1996 Act's implementation requirements. Establishing a Total Elements Long Run Incremental Cost ("TELRIC") pricing methodology to satisfy the standards set forth in Sections 252(d)(1) and 252(d)(2) ignores the 1996 Act's clear intention to price the services provided pursuant to these different provisions differently.

II. TO FACILITATE COMPETITIVE ENTRY AND PREVENT ILEC ABUSES, THE COMMISSION MUST ESTABLISH EXPLICIT PERFORMANCE STANDARDS.

In implementing Sections 251 and 252 of the 1996 Act, the Commission has opened the door to local competitive entry and set the framework for interconnection arrangements that will allow competitive carriers to enter the market. As competitors attempt to offer competitive services, it becomes ever more crucial to establish explicit performance standards to ensure that competitors can indeed operate under their interconnection agreements. As TCG discussed in its initial comments in this proceeding, incumbent LECs must be required to meet specified performance standards, such as installation intervals, mean time to repair, service availability standards, and similar performance criteria.[3] Comparative reporting of actual incumbent LEC performance is absolutely essential to ensure that the incumbent ILECs are meeting their obligations. Only financial penalties for failure to meet these standards will provide a sufficient incentive for ILECs to uphold these standards. Similarly, once RBOCs obtain an interconnection agreement and permission to enter into long distance markets, they will have little incentive to achieve reasonable service standards.

The Commission's Interconnection Order fails to address the problems that TCG has already experienced in dealing with incumbent LECs, particularly with service quality, even though the Commission is "cognizant of the fact that incumbent LECs have the incentive and the ability to engage in many kinds of

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3. TCG Comments at 25-26.

discrimination."[4] Although the Commission has adopted national guidelines, these are insufficient to protect against the nondiscriminatory behavior that the Commission itself acknowledges. Without comparative reporting and a self-policing, self-executing remedy for poor incumbent LEC performance, effective local competition will remain at the mercy of incumbent LECs, even after interconnection agreements are finalized. For these reasons, it is essential that incumbent LEC performance in implementing interconnection arrangements between a requesting carrier and an incumbent LEC at least be equal to the performance and quality provided by the incumbent LEC itself, and to its affiliates for its own services. Having already determined that "national rules regarding nondiscriminatory access will reduce the costs of entry and speed the development of competition,"[5] it follows that the Commission must give additional guidance as to how these guidelines will be implemented.

Significantly, the receptiveness of the public to competitive LEC services hinges on the timeliness and quality of the interconnection arrangements that competitive LECs receive from incumbent LECs. To ensure that incumbent LECs treat interconnecting competitors in a non-discriminatory manner, the Commission should require that they file with the Commission, and provide to its competitors, comparative quarterly reports that describe its performance in providing interconnection facilities to competitors and provide a comparison to its

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4. Interconnection Order at ¶ 307.

5. Interconnection Order at ¶ 308.

performance in provisioning its own requirements. This outcome would be entirely consistent with the Commission's determination that "incumbent LECs should be required to fulfill some type of reporting requirement to ensure that they provision unbundled elements in a nondiscriminatory manner."[6] TCG disagrees, however that there was an insufficient record to implement such requirements.[7]

Specifically, the Commission should require in the quarterly reports the following information: (1) as measured from the time of the request to deliver service, the length of time taken to provide interconnection arrangements to itself, to its affiliates, and to its competitors; and (2) objective performance information including mean time to repair, service availability standards, and similar performance criteria with regard to interconnection arrangements that the incumbent LEC provides to itself, to its affiliates, and to its competitors. The incumbent LEC should provide information with respect to all interconnecting competitive LECs. Without such comparative reporting, it will be difficult for competitive LECs to determine if the incumbent LEC is providing them with fair and nondiscriminatory interconnection.

This information must be provided on an exchange area-by-exchange area basis for each CLEC since statewide data will average and misrepresent the different market-by-market performance of the incumbent LEC in meeting its

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6. Interconnection Order at ¶ 311.

7. See TCG Reply Comments at 26-29 (reviewing commenters' discussion of performance standards).

competitor's needs. The incumbent LEC should also report information separately for: all residential customers; business customers generally; the ten largest business customers; and carrier customers in each exchange area. Finally, the incumbent LEC should provide this information as an ordinary cost of doing business -- it should not be allowed to charge its competitors for the incumbent LEC's costs of demonstrating that they are complying with their legal obligation.

Moreover, detailed performance reporting requirements should decrease the number of complaints that may otherwise be filed concerning the level of service the incumbent LEC provides to its competitors. Without objective reporting requirements in place, a competitive carrier would be forced to use its best "guesstimate" of what the incumbent LEC is providing to itself or affiliates in determining whether or not to file a complaint before the Commission. If, however, the competitive provider has objective reports by which it could compare the incumbent LEC's actual service performance to itself and to competing providers in similar geographic areas and for similar classes of customers, competitive carriers would have available an objective measurement by which it can determine whether they have substantial grounds to file a complaint.

III. THE COMMISSION'S TELRIC PRICING STANDARD CANNOT SATISFY BOTH SECTION 252(d)(1) AND SECTION 252(d)(2).

Section 252(d)(1) states that the pricing standard for interconnection and network elements must be "based on the cost (determined without reference to the rate-of-return or other rate-based proceeding) of providing the interconnection

or network element (whichever is applicable)," and "may include a reasonable profit."[8] In implementing this pricing standard, the FCC set forth a cost-based pricing methodology based on forward-looking economic costs which may not include any embedded costs. The Commission concluded that "because the cost of building an element is based on forward-looking economic costs, new entrants' investment decisions would be distorted if the price of unbundled elements were based on embedded costs."[9] Therefore, the Commission asserted that the prices that potential entrants pay for these elements should reflect forward-looking economic costs to encourage efficient levels of investment and entry.[10] The Interconnection Order defines the pricing method as TELRIC and includes a reasonable allocation of forward-looking joint and common costs.

Significantly, the Interconnection Order found that the TELRIC pricing methodology includes a reasonable profit, and therefore, no additional profit over and above TELRIC would be necessary to meet the pricing standard set forth in the 1996 Act.[11] Thus, the Commission concludes that its TELRIC pricing standard covers the entire cost of providing the interconnection or network element plus a reasonable profit as required by the 1996 Act.

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8. 47 U.S.C. §252(d)(1).

9. Interconnection Order at ¶620.

10. Interconnection Order at ¶672.

11. Interconnection Order at ¶699. The Commission determined that "normal profit" -- the total revenue required to cover all of the costs of a firm, including its opportunity costs -- is embodied in "reasonable profit" under Section 252(d)(1). Id.

The Commission then applies the same costing methodology, TELRIC, to determine the appropriate pricing for the Transport and Termination of competitors' traffic. However, the 1996 Act sets forth a separate, distinct pricing standard for this function. The 1996 Act states that the pricing standard for Transport and Termination must be based on "a reasonable approximation of additional costs of terminating such calls."[12] The statutory language clearly eliminates "reasonable profit" from the pricing standard established for Transport and Termination, and uses the term "additional cost" rather than "cost". Clearly, Congress' intent was to establish a different pricing standard for Transport and Termination than for interconnection and unbundled network elements. In addition, because the pricing standard for Transport and Termination includes only *additional* costs (as opposed to "costs" for interconnection and unbundled elements) and because it excludes reasonable profit, it would appear that the pricing standard for Transport and Termination must generally, if not always, yield a lower price than the pricing standard for interconnection and unbundling. The lower price for Transport and Termination recognizes that there is no alternative to this function from potential competitors because it is the last bottleneck facility.

The Commission's adoption of a single pricing methodology to satisfy both Sections 252(d)(1) and 252(d)(2) of the 1996 Act is contrary to the general rules of statutory construction. The FCC's interpretation is impermissible in that it ignores the clear language of the 1996 Act that establishes two distinct pricing

12. 47 U.S.C. § 252(d)(2)(ii).

requirements. Thus, the FCC's interpretation defies a fundamental principle of statutory construction which mandates that the statute must be read so as to render all of its provisions meaningful.[13] Moreover, statutes are to be construed so that "no provision is rendered 'inoperative' or superfluous, void or insignificant."[14]

Had Congress intended that a single pricing methodology by applied for interconnection, unbundled network elements and Transport and Termination there would have been no need to draft and adopt Section 252(d)(2)(A)(ii). Therefore, TCG urges the Commission to establish a pricing methodology for Transport and Termination that satisfies the 1996 Act's intent to create a distinct and narrow pricing standard for Transport and Termination than for interconnection and unbundled network elements. Two distinct pricing standards are needed to comply with the statutory language and recognize Congress's intent to establish two pricing standards.

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13. See Tobey v. N.L.R.B., 40 F.3d 469 (D.C. Cir. 1994). See also Natural Resources Defense Council v. EPA, 822 F.2d 104, 113 (D.C. Cir. 1987) (finding that the NRDC's suggested interpretation of a statute impermissibly wrote out "the clear language that Congress saw fit to enact").

14. See, e.g., Mail Order Ass'n of America v. U.S. Postal Serv., 986 F.2d 509, 515, remanded in part, review denied in part, 2 F.3d 408 (D.C. Cir. 1993) (citations omitted) (construing two statutory provisions regarding the authority of the Postal Service to seek judicial review).

IV. CONCLUSION

For the reasons set forth herein, TCG urges the Commission to modify its Interconnection Order to: (1) set forth explicit performance standards that will help ensure that the underlying intent of the 1996 and the Commission's implementation orders to create a competitively neutral environment that will continue to be enforceable even after interconnection agreements are in place; and (2) establish two distinct pricing standards, one for interconnection and unbundling, and the other for Transport and Termination as required under the 1996 Act.

Respectfully submitted,

Teleport Communications Group Inc.

By: _____

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September 30, 1996

CERTIFICATE OF SERVICE

I, Marjorie A. Schroeder, hereby certify that a copy of the foregoing Petition for Reconsideration was delivered by hand on September 30, 1996 to the following:

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